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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RENATA BONAR, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

BEAM GLOBAL SPIRITS & WINE, Inc., et al.,

Defendant.

CASE NO. 11cv2058-CAB (KSC)

**ORDER GRANTING
EXTENSIONS & DETERMINING
DISCOVERY DISPUTES**

[Doc. Nos. 46, 53, 54 & 55]

Before the Court are four motions, including; Joint Motion for Determination of Discovery Dispute, as well as supporting and opposing points and authorities, declarations, and exhibits [Doc. No. 46]; Joint Motion to Continue Class Certification Motion Discovery Cut-Off [Doc. No. 53]; Joint Motion for Determination of Discovery Dispute, as well as supporting and opposing points and authorities, declarations, and exhibits [Doc. No. 54]; and, plaintiff's Ex Parte Motion to Continue Deadline to File Motion for Class Certification. [Doc. No. 55]

The parties' first dispute centers on defendant Beam Global's First Set of Requests for Production of Documents. [Doc. No. 46] Defendant contends that plaintiff Renata Bonar failed to provide adequate responses to Document Request Nos. 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 18, 19, and 21. The parties' second dispute centers on plaintiff's Second Set of Requests for Production of Documents. [Doc. No. 54] Plaintiff contends that defendant failed to provide adequate responses to Document Request Nos. 84, 85, 86, 87, 88, 89, 90, 91, 97, and 103.

1 The parties' two requested extensions relate to Class Certification deadlines. [Doc. Nos. 53,
2 55] With respect to the first request [Doc. No. 53], the parties jointly seek a one-day continuance of
3 the Class Certification motion discovery cut-off date from December 10, 2012 to December 11, 2012.
4 Regarding the second request [Doc. No. 55], the parties seek an extension of time for plaintiff to file
5 a Motion for Class Certification until 60 days after a ruling on defendant Beam Global's pending
6 Motion for Summary Judgment. [Doc. No. 50]

7 As to the parties' first discovery dispute, the Court rules that defendant's request for an Order
8 compelling plaintiff to provide more complete responses [Doc. No. 46] is **GRANTED in part** and
9 **DENIED in part**. Regarding the parties' second dispute, the Court finds that plaintiff's request for
10 an Order compelling defendant to provide more complete responses [Doc. No. 54] is **DENIED**. With
11 respect to the requested extensions, the parties' December 7, 2012 Joint Motion [Doc. No. 53] and
12 plaintiff's ex parte Motion to Continue Plaintiff's Deadline to File a Motion for Class Certification
13 [Doc. No. 55] are both **GRANTED**.

14 **BACKGROUND**

15 Plaintiffs are consumers who purchased "Skinnygirl" Margarita which was marketed,
16 distributed, and sold by defendant Beam Global Spirits & Wine, Inc. ("Beam" or "defendant"). Beam
17 markets, distributes, and sells numerous premium spirit brands, including "Skinnygirl." Beam claims
18 in its advertising and labeling that "Skinnygirl" spirits are all natural, use all natural ingredients, and
19 contain no preservatives. In pertinent part, the "Skinnygirl" label contains the following: (1) "All
20 Natural" referenced in bold lettering; (2) representation that it is slightly sweetened with agave; and
21 (3) that it is the margarita "you can trust." According to the Complaint, while the label does not
22 include any mention of preservatives, "Skinnygirl" does in fact contain sodium benzoate (a
23 preservative).

24 Plaintiff alleges that defendant falsely warranted and represented that its "Skinnygirl" products
25 are all natural and contain no preservatives, and that defendant's advertising and labeling are false,
26 misleading, and reasonably likely to deceive the public. Plaintiff contends the all-natural advertising
27 campaign is designed to cause consumers to purchase "Skinnygirl." Plaintiff Renata Bonar brings this
28 action on behalf of herself and other similarly situated consumers in the United States to halt the

1 dissemination of the allegedly false and misleading advertising, to correct the false perception it has
 2 created in the minds of consumers, and to obtain redress for those who purchased “Skinnygirl” brand
 3 spirits. Plaintiff specifically alleges violations of the California Consumers Legal Remedies Act (CAL
 4 CIV. CODE § 1750, *et seq.*); California’s Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200,
 5 *et seq.*); and Breach of Express Warranty created by its advertising, including labeling (CAL. COMM.
 6 CODE § 2313).

7 DISCUSSION

8 The scope of discovery under Rule 26(b) is broad: “[p]arties may obtain discovery regarding
 9 any matter, not privileged, which is relevant to the claim or defense of any party involved in the
 10 pending action. Relevant information need not be admissible at trial if the discovery appears
 11 reasonably calculated to lead to the discovery of admissible evidence.” FED.R.CIV.P. 26(b). However,
 12 a court may limit discovery of relevant material if it determines that the discovery sought is
 13 unreasonably cumulative or duplicative, or obtainable from some other source that is more convenient,
 14 less burdensome, or less expensive, or the burden or expense of responding to the proposed discovery
 15 outweighs the likely benefit. The party resisting discovery generally bears the burden of showing that
 16 the discovery requested is irrelevant to the issues in the case or is overly broad, unduly burdensome,
 17 unreasonable, or oppressive. If the resisting party meets its burden, the burden shifts to the moving
 18 party to show the information is relevant and necessary. *Henderson v. Holiday CVS, L.L.C.*, 269
 19 F.R.D. 682, 686 (2010).

20 **I. Defendant Beam Global’s First Set of Requests for Production of Documents**

21 Defendant contends that plaintiff Renata Bonar failed to provide adequate responses to
 22 Document Request Nos. 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 18, 19, and 21. [Doc. No. 46] However,
 23 based on the representations made by plaintiff, and the underlying papers, only Request Nos. 9 and 10
 24 appear to be at issue. With respect to the other numbered Requests mentioned above, any dispute over
 25 them appears to be procedural, not substantive.

26 **A. Request Nos. 3, 4, 6, 7, 8, 11, 12, 14, 15, 18, 19, and 21**

27 After initially responding with numerous objections, plaintiff supplemented her responses to
 28 all of these Requests on October 8, 2012 by either producing all responsive items in her possession

1 or stating that she did not have any documents in her possession responsive to the requests. More
2 specifically, “[s]ubject to and without waiving” previously stated objections, “Ms. Bonar has already
3 produced all documents in her possession, custody, or control.” [Doc. No. 46, Exh. D] Defendant
4 argues that plaintiff’s responses are provided “subject to and without waiving” objections, thereby
5 creating ambiguity as to whether plaintiff produced all responsive documents, notwithstanding the
6 objections, or instead withheld production because of the stated objections. To address this ambiguity,
7 defendant asks the Court to order plaintiff to produce responsive documents or “provide an
8 unequivocal response that [notwithstanding the objections] no such documents exist.”

9 While plaintiff’s language creates some doubt as to whether the responses were limited by the
10 objections, an October 9, 2012 e-mail exchange between Susan St. Denis (attorney for defendant) and
11 Rosa Shelton (attorney for plaintiff) clarifies this uncertainty. In that exchange, Ms. Shelton stated that
12 on October 8, 2012, plaintiff “supplemented subject to and without waiving [her] original objections”
13 for the purpose of “preserving all appropriate objections,” but she “did not withhold any documents
14 based upon the objections” [Doc. No. 46, Exh. F] Ms. St. Denis contends that plaintiff’s
15 responses do not provide defense counsel with adequate assurances. [Doc. No. 46, Exh. G]

16 Plaintiff’s supplemental responses to these Requests are not adequate. Defendant seeks an
17 unequivocal and binding statement from plaintiff. While plaintiff provided assurances in the October
18 9, 2012 e-mail exchange discussed above, an e-mail exchange is not a binding discovery response, and
19 thus, is insufficient. FED.R.CIV.P. 26(g)(1)(A). Accordingly, plaintiff’s representative must provide
20 defendant with a written declaration under penalty of perjury detailing their efforts to locate the
21 sought-after items and stating that “to the best of [his or her] knowledge, information, and belief
22 formed after a reasonable inquiry,” the responses to these requests are “complete and correct.”
23 FED.R.CIV.P. 26(g)(1)(A).¹ Therefore, defendant’s request for an Order requiring plaintiff to provide
24 more complete responses to Request Nos. 3, 4, 6, 7, 8, 11, 12, 14, 15, 18, 19, and 21 is **GRANTED**.

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28 ¹ Under Rule 26(g)(1)(A), discovery responses must be accompanied by a certification “after a reasonable inquiry” indicating that the disclosure is “complete and correct as of the time it is made. . . .”

1 **B. Request No. 9**

2 Request No. 9 seeks all documents related to any purchase by or for plaintiff (or on plaintiff's
3 behalf) "of a food or beverage product promoted or labeled as 'natural' or 'all natural' (other than the
4 PRODUCT) since January 1, 2009." [Doc. No. 46, p. 17] Defendant contends the documents sought
5 by this Request are relevant to plaintiff's purchasing habits with regard to natural food and beverages,
6 including alcoholic beverages. [Doc. No. 46, p. 18]

7 Plaintiff argues that she does not have or keep receipts evidencing her grocery store purchases,
8 nor "does she keep labels from her purchases from the actual containers of the products she has
9 purchased." *Id.* However, plaintiff concedes that she might have bank statements and other records
10 which would be responsive to the request. *Id.* On October 9, 2012, plaintiff produced what she claims
11 to be all of the responsive documents in her possession, namely financial statements from the previous
12 three months. *Id.* However, according to defendant, without an additional statement of assurance from
13 plaintiff, defendant is left to "guess" whether this production represents the entire universe of
14 documents in plaintiff's custody. *Id.* at 19. Further, defendant argues there is no explanation for why
15 there are no receipts for the time period after defendant's requests for production were served. *Id.*

16 With respect to Document Request No. 9, the Court finds that plaintiff has improperly failed
17 to preserve receipts related to purchases of food/beverages labeled all natural after being served with
18 defendant's document request. Because the main issues in the case involve consumer choices,
19 motives, and inducements for purchasing products based on "all-natural" marketing, plaintiff's record
20 of consumption of similar products is relevant. Thus, from the date that plaintiff was served with
21 Request No. 9, she was required to maintain chronological responsive receipts. Further, despite the
22 fact that production of responsive financial information which precedes the production made involves
23 time, expense, and interaction with third-party banks with whom plaintiff no longer does business,
24 defendant is entitled to obtain such records dating back to January 1, 2009. Plaintiff is required to
25 produce these documents, or, if they are no longer in her possession, provide defendant with the bank
26 names, branch addresses, and dates plaintiff banked with the financial institutions, along with an
27 appropriate release which will allow for the direct production of responsive records from the financial
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1 institution to the defendant. Lastly, defendant is entitled to a Rule 26(g)(1)(A) certification from
2 plaintiff that the production to date represents the entire universe of documents in plaintiff's custody.

3 For all these reasons, defendant's request for an order requiring plaintiff to provide a more
4 complete response to Request No. 9 is **GRANTED**.

5 **C. Request No. 10**

6 Request No. 10 seeks all photographs depicting plaintiff with, holding, or consuming a food
7 or beverage from January 1, 2009 to present. [Doc. No. 46, p. 20] Defendant contends the photographs
8 are relevant to plaintiff's eating and drinking habits as they may show that she consumes products that
9 are not "all natural" or preservative-free. *Id.* Defendant argues this could undermine plaintiff's
10 argument that she purchased "Skinnygirl" for its "all-natural" qualities by demonstrating alternative
11 reasons for her purchases, such as its low calorie count. *Id.*

12 While consistently questioning the relevancy, plaintiff argues that the photographs are an
13 inefficient means of demonstrating whether she relied on the "all-natural" labeling in purchasing
14 "Skinnygirl." *Id.* at 21. Further, plaintiff contends she has already produced documentation regarding
15 both her involvement in a weight loss program (Weight Watchers) and debit card statements
16 evidencing her dining/eating habits. *Id.* at 22. Plaintiff argues that the production to date is sufficient
17 for the purpose of establishing her pattern of consumption as well as her motives for purchasing
18 food/beverages.

19 A court may limit discovery of relevant material if it determines that the discovery sought is
20 unreasonably cumulative, or obtainable from some other source that is more convenient, less
21 burdensome, or the burden of proposed discovery outweighs the likely benefit. FED.R.CIV.P. 26(b);
22 *Henderson*, 269 F.R.D. at 686. While plaintiff's consumption habits and choices are at issue in this
23 case, there are more efficient, accurate, and less intrusive ways of determining plaintiff's pattern of
24 consumption and motives for purchasing relevant products. As pointed out by plaintiff, it would be
25 difficult to determine from a photograph whether the food/beverages being consumed were "all-
26 natural." While the Court recognizes that a photograph could conceivably capture the label of a
27 particular product or that an item is so unique as to be identifiable without a label, defendant's request
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1 is unreasonably broad. Further, this request would likely lead to the production of photographs
2 containing unidentifiable foods and beverages, yielding speculative and unreliable results at best.

3 Considering that plaintiff has already produced documentation regarding her involvement in
4 a weight loss program and debit card statements evidencing her dining/eating habits, the requested
5 photographs would add very little to establishing plaintiff's pattern of or motives behind food and
6 beverage consumption. Therefore, the Court finds that the probative value of the photographs
7 requested is outweighed by potential prejudice and confusion.

8 For all these reasons, defendant's request for an order requiring plaintiff to provide a more
9 complete response to Request No. 10 is **DENIED**.

10 **II. Plaintiff Renata Bonar's Second Set of Requests for Production of Documents**

11 Plaintiff contends that defendant Beam Global failed to provide adequate responses to
12 plaintiff's second set of Document Requests, specifically Nos. 84, 85, 86, 87, 88, 89, 90, 91, 97, and
13 103. [Doc. No. 54] Request Nos. 84-91 all relate to defendant Beam's responses to discovery in other
14 cases. Further, Request No. 97 involves a disagreement over the completeness of a Redaction Log,
15 and Request No. 103 involves a dispute of overbreadth.

16 **A. Request No. 84**

17 Request No. 84 seeks the deposition transcript of Bethenny Frankel covered by protective
18 orders issued in two collateral lawsuits. Plaintiff argues that the Frankel deposition transcript is
19 relevant and relates to the marketing of the product and the initial decision to label it as "all natural."
20 [Doc. No. 54, p. 3-4] Defendant contends the Frankel deposition transcript has been designated "highly
21 confidential" and not subject to disclosure pursuant to two protective orders in place in the *Rapcinsky*²
22 and *Langendorf*³ cases. *Id.* at 4. Per the terms of the protective orders,⁴ defendant argues that the
23 Courts in which they were entered (the Southern District of New York and the Northern District of
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25 ²*Rapcinsky v. Skinny Girl Cocktails, LLC*, 11cv6546 in the Southern District of New York

26 ³*Langendorf v. Skinny Girl Cocktails, LLC*, 11cv7060 in the Northern District of Illinois

27 ⁴ "If a party wishes to disclose any information designated as Confidential to any person not
28 described in paragraph 8 of this Protective Order, permission to so disclose must be requested from
the Designating Party in writing. If the Designating Party objects to the proposed disclosure, no such
disclosure shall be made unless this Court, upon application by the party requesting such permission,
otherwise orders." [Doc. No. 54, Exhs. B and C, p. 5]

1 District of Illinois) are the proper forums for deciding whether disclosure of confidential information
 2 is appropriate in this case, and not the Southern District of California. *Id.*

3 As stated by the Ninth Circuit in *Foltz*, “The court that issued the [protective] order is in the
 4 best position to make the relevance assessment for it is presumably the court familiar with the contents
 5 of the protected discovery.” *Foltz v. State Farm Mutual Auto Ins. Co.*, 331 F.3d 1122, 1132 (9th Cir.
 6 2003). Here, the District Courts in the Southern District of New York and the Northern District of
 7 Illinois both issued protective orders covering the Frankel deposition transcript. While it is unclear
 8 from the papers which protective order is controlling,⁵ both orders contain identical language directing
 9 a third party seeking the disclosure of any information designated as Confidential to request permission
 10 from the Designating Party, and, if permission is not granted for the requested disclosure, to file an
 11 application with the Court which issued the protective order. Assuming the Designating Party objects
 12 to disclosure, in order for plaintiff to obtain a copy of the Frankel deposition transcript, plaintiff must
 13 abide by the terms of the protective orders and file an application with the appropriate District Court.
 14 Either the Southern District of New York or the Northern District of Illinois, whichever is presiding
 15 over the case in which the deposition was noticed and taken, and not the Southern District of
 16 California, is the proper forum for obtaining disclosure of materials designated “Confidential” under
 17 the operative protective orders. For these reasons, plaintiff’s request seeking an Order compelling
 18 additional responses by defendant Beam to Request No. 84 is **DENIED**.

19 **B. Request Nos. 85-91**

20 Request Nos. 85-91 seek all of defendant’s discovery responses from 7 pending (collateral)
 21 lawsuits in “sister” cases in other federal jurisdictions.⁶ Plaintiff contends that the discovery in the

22 ⁵ It is unclear in which case the Frankel deposition was originally noticed and taken. However,
 23 it appears to be the *Langendorf v. Skinny Girl Cocktails, LLC*, 11cv7060 in the Northern District of
 24 Illinois, as Ms. Frankel is a named defendant in that matter.

25 ⁶ The actual requests read: “All of YOUR discovery responses from requests propounded to
 26 YOU in the [Case Name, Number, Jurisdiction].” The 7 requests at issue involve pending litigation
 27 in 7 federal jurisdictions, identified as follows: *Rapcinsky v. Skinny Girl Cocktails, LLC*, 11cv6546,
 28 Southern District of New York; *Green v. Skinny Girl Cocktails, LLC*, 11cv61965, Southern District
 of Florida; *Von Kaenel v. Skinny Girl Cocktails, LLC*, 11cv7305, Central District of California;
Stewart v. Beam Global Spirits & Wine, Inc., et al., 11cv5149, District of New Jersey; *Sims v. Beam
 Global Spirits & Wine Inc., et al.*, 11cv6403, Northern District of Illinois; *Jernigan v. Beam Global
 Spirits & Wine, Inc., et al.*, 11cv842, Southern District of Illinois; and *Roth v. Beam Global Spirits &
 Wine, Inc., et al.*, 11cv1023, District of New Mexico.

1 “sister-actions is identical or very similar because the same or substantially the same allegations are
2 contained in each action.” *Id.* at 3-4. Defendant argues plaintiff is not entitled to consolidate discovery
3 in this Court after failing to win consolidation before the Judicial Panel on Multidistrict Litigation.
4 [Doc. No. 54, p. 7, citing *In re Skinnygirl Margarita Bev. Mktg. & Sales Practices Litig.*, 829 F. Supp.
5 2d 1380, 1381 (J.P.M.L. 2011). By expanding the scope of discovery to include activities in 7 other
6 federal jurisdictions, defendant contends plaintiff’s attempt “subverts the limits on discovery in this
7 case” and undermines this Court’s ability to manage discovery disputes. *Id.* at 8. Lastly, defendant
8 argues this approach would be inefficient and claims plaintiff has not carried her burden of
9 demonstrating how all the discovery responses from other cases are relevant to issues and claims in
10 this case. *Id.* at 8-9.

11 While it is true that the Ninth Circuit favors collateral litigation discovery to the extent that it
12 “advances the interests of judicial economy by avoiding the wasteful duplication of discovery,”
13 plaintiff has failed to carry her burden of demonstrating the relevance of the sought-after discovery
14 materials from the collateral Skinnygirl cases. *Foltz*, 331 F.3d at 1132. With respect these 7 Requests,
15 plaintiff claims in her moving papers that the issues in this case are “identical or very similar” to the
16 issues in the collateral cases because the “same or substantially the same allegations are contained in
17 each action.” [Doc. No. 54] However, the Judicial Panel on Multidistrict Litigation denied plaintiff’s
18 attempt to consolidate with the collateral cases, finding that “common material disputed facts may be
19 limited in number.”⁷ Considering the rationale provided by the Judicial Panel, a proper request for
20 discovery from collateral Skinnygirl cases would be for specific information related to common issues
21 not otherwise obtainable. Here, plaintiff does not present specific requests, but instead seeks to
22 examine all the discovery responses from the “sister cases” as a method of “fact-checking” defendant
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25 ⁷ In its ruling denying consolidation to the Skinnygirl plaintiffs, the Judicial Panel noted that
26 “plaintiffs have failed to detail how pretrial proceedings would benefit from centralization. . . .[,] that
27 [] common material disputed facts may be limited in number. . . .[,] and [that] centralization may not
28 prevent either conflicting or multiple rulings, because plaintiffs bring their claims under the laws of
different states. Under some state laws, the state of mind or reliance by individual purchasers may be
a critical factor; in others it may not. These issues would not involve common discovery.” *In re*
Skinnygirl Margarita Bev. Mktg. & Sales Practices Litig., 829 F. Supp. 2d at 1381.

1 Beam's responses in this case. [Doc. No. 54] This request is clearly overbroad and does not advance
2 judicial economy.

3 In light of plaintiff's failure to achieve consolidation before the Judicial Panel, its blanket
4 requests for access to all of defendant Beam's discovery responses from collateral cases are
5 inappropriate. While narrowly tailored, factually specific requests will be considered, the Requests
6 as phrased are overbroad and unduly burdensome. Accordingly, plaintiff's request seeking an Order
7 compelling additional responses by defendant Beam to Request Nos. 85-91 is **DENIED**.

8 **C. Request No. 97**

9 This dispute centers on plaintiff's dissatisfaction with the Redaction Log provided by defendant
10 Beam. Specifically, plaintiff takes issue with the content defendant has chosen to redact as well as the
11 timeliness and completeness of the Redaction Log defendant has produced. [Doc. No. 54] Defendant
12 contends that on December 10, 2012, it provided plaintiff with a Redaction Log covering all redactions
13 in documents that defendant produced as of the same date. [Doc. No. 44, pp. 33-34] The next day,
14 hours before the December 11, 2012 Joint Motion for Determination of Discovery Dispute was filed,
15 plaintiff apparently inserted in the Joint Motion new arguments regarding the Log.

16 Under Judge Crawford's Chambers' Rules, before submitting a Joint Motion for Determination
17 of Discovery Dispute, "Counsel must meet and confer on all issues **before** contacting the Court."
18 Crawford Chamber Rule V.(B.)(emphasis in the original). Further, parties must give each other a
19 "reasonable opportunity" to participate in the Joint Motion. Crawford Rule V.(D.). Under the
20 applicable rule, a "reasonable opportunity to participate" is defined as 5 business days. *Id.* Here, the
21 parties have not adequately met and conferred on the issue of the Redaction Log. Rather, plaintiff
22 received defendant's Log on December 10, 2012 and included arguments in the December 11, 2012
23 Joint Motion regarding the Log's perceived flaws. As such, this issue is not yet ripe for motion.
24 Accordingly, plaintiff's request for an Order compelling additional responses by defendant to Request
25 No. 97 is **DENIED without prejudice**. The parties are **ORDERED** to meet and confer on this issue.

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1 **D. Request No. 103**

2 Plaintiff's Request No. 103 seeks "All DOCUMENTS regarding Whole Foods Market, Inc."
3 [Doc. No. 54] Plaintiff argues the request is relevant because "it is believed that Whole Foods, Inc.
4 pulled the product from its shelves based upon the ingredients in the product." *Id.* While the parties
5 have met and conferred on this issue, defendant's objection to this request on overbreadth remains.
6 *Id.* Defendant argues that plaintiff's Request Nos. 104 and 105 already "fully address the subject" by
7 calling for production of documents regarding "Whole Foods' decision to remove Skinny Girl
8 Margarita Product from its stores." *Id.* The Court finds that Request No. 103 is unreasonably broad
9 and any attempt by the parties to narrow its scope would be futile, as Request Nos. 104-105 already
10 call for the production of Whole Foods documents which may have relevance in this case. Therefore,
11 plaintiff's request for an Order compelling additional responses by defendant to Request No. 103 is
12 **DENIED.**

13 **III. Joint Motion to Continue Class Certification Motion Discovery Cut-Off**

14 On December 7, 2012, the parties filed a Joint Motion to Continue Class Certification Motion
15 Discovery Cut-Off by one day, from December 10, 2012 to December 11, 2012. [Doc. No. 53] The
16 Court was not able to rule on this Joint Motion before the deadline passed. Notwithstanding, the Joint
17 Motion [Doc. No. 53] is **GRANTED**, *ex post facto*.

18 **IV. Ex Parte Motion to Continue Deadline to File Motion for Class Certification**

19 On December 21, 2012, plaintiff filed an Ex Parte Motion to Continue Plaintiff's Deadline to
20 File Motion for Class Certification Until 60 Days After Beam Global's Motion for Summary Judgment
21 is Determined. [Doc. No. 55] While the Motion was improperly presented in an *ex parte* format,
22 counsel for defendant stipulated to the continuance via e-mail. [Doc. No. 55, Declaration of Rosa E.
23 Shelton, Exh. A, ¶ 2] The parties represent that it would be a waste of party and Court resources to
24 file and hear the Motion for Class Certification prior to a ruling on defendant Beam's Motion for
25 Summary Judgment. [Doc. No. 50] District Judge Cathy Ann Bencivengo is currently set to hear the
26 Motion for Summary Judgment on February 19, 2013.
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1 As per the First Amended Scheduling Order [Doc. No. 45], the current deadline for filing Class
2 Certification Motion is January 14, 2013. Good cause appearing, the Court **VACATES** the deadline
3 and will re-set the deadline for filing a Certification Motion until after a decision is rendered on
4 defendant Beam's Motion for Summary Judgment. Counsel for defendant Beam is **ORDERED** to
5 contact the Chambers of Magistrate Judge Karen S. Crawford within 3 business days of a ruling on
6 defendant's Motion for Summary Judgment so that a new date can be set. All other dates contained
7 in the First Amended Scheduling Order [Doc. No. 44] will remain in place.

8 **CONCLUSION**

9 Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

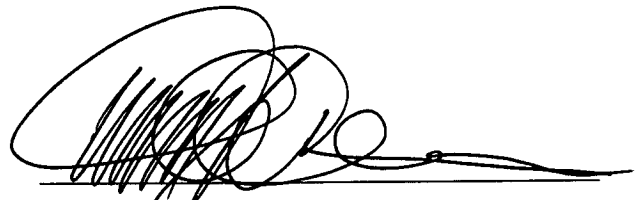
10 1. With respect to the parties' first Joint Motion for Determination of Dispute, as
11 stated in greater detail above, defendant's request for an Order compelling plaintiff to provide
12 more complete responses to Document Request Nos. 3, 4, 6, 7, 8, 9, 11, 12, 14, 15, 18, 19, and 21
13 [Doc. No. 46] is **GRANTED**. With respect to Request No. 10, defendant's request for additional
14 responses from plaintiff is **DENIED**.

15 2. With respect to the parties' second Joint Motion for Determination of Dispute,
16 plaintiff's request for an Order compelling defendant to provide more complete responses [Doc.
17 No. 54] is **DENIED**.

18 3. The Joint Motion to Continue Class Certification Motion Discovery Cut-Off [Doc.
19 No. 53] and the Ex Parte Motion to Continue Plaintiff's Deadline to File Motion for Class
20 Certification [Doc. No. 55] are both **GRANTED**. The January 14, 2013 date for filing a Motion
21 for Class Certification is vacated.

22 **IT IS SO ORDERED.**

23 Date: January 17, 2013



24 KAREN S. CRAWFORD
25 United States Magistrate Judge
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